

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

EMILY SOCOLOV,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE including
its components OFFICE OF LEGAL
COUNSEL and OFFICE OF INFORMATION
POLICY, and FEDERAL BUREAU OF
INVESTIGATION

Defendants.

Civil Action No. 1:19-cv-00419

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. In March of 1949, during the early years of the Cold War and just prior to the advent of McCarthyism, the Federal Bureau of Investigation (“FBI”) arrested a young Department of Justice (“DOJ”) employee named Judith Coplon on suspicion of spying for the Soviet Union. At the time of her warrantless arrest, Ms. Coplon’s purse contained several documents, including FBI data slips and notes regarding a purportedly “top secret” memorandum. Unbeknownst to Ms. Coplon, she had for months been under physical and technical surveillance at the direct order of FBI director J. Edgar Hoover. While working with the U.S. Army’s Signal Intelligence Service—the progenitor to the National Security Agency (“NSA”)—on a clandestine project to intercept and decrypt messages transmitted by Soviet intelligence agencies overseas (“VENONA”), the FBI had identified Ms. Coplon as the subject of a series of messages concerning a female KGB agent, code-named “SIMA,” who worked for the DOJ and had access to FBI materials. The “VENONA Project” itself

was so secretive that its existence was withheld from both the Central Intelligence Agency (“CIA”) and even the President of the United States.

2. Following two highly publicized trials, and despite no evidence of documents ever having changed hands, Ms. Coplon gained the dubious distinction of becoming the first American citizen to be convicted of espionage for the Soviet Union. Her New York federal court conviction—later overturned on appeal—came as American fears of communist infiltration gripped the nation during the Red Scare. It took nearly twenty years, but the indictments against Ms. Coplon were finally dismissed in 1967 based, at least in part, on the illegality of the FBI’s surveillance and possible entrapment.

3. Plaintiff, Dr. Emily Socolov, is Ms. Coplon’s daughter. Dr. Socolov is currently researching and writing a book that places her late mother’s tribulations in the greater context of the Cold War. The government’s files are now the sole source of information available to her.

4. Dr. Socolov served two Freedom of Information Act (“FOIA”) requests, in 2012 and 2013, for records concerning her mother.

5. In response, the FBI made seventeen releases to Dr. Socolov. Over the course of these releases, which span several years, the FBI stated that it had reviewed a combined 15,025 responsive pages and released 10,751 pages.¹ The FBI withheld six pages of responsive documents in their entirety, but redacted approximately 1,300 more pages pursuant to various FOIA exemptions without adequately explaining or justifying the exemptions’ application to the specific pages withheld or language redacted. Moreover, many of the redactions were inconsistent from document to document. In some instances, the FBI actually withheld or failed to produce documents that it had produced pursuant to other persons’ FOIA requests or that it had published

¹ The overwhelming majority of pages that the FBI withheld were described as duplicate pages in the FOIA responses received from the FBI.

on its website, thus calling into question the adequacy of the FBI's search and the propriety of its redactions and withholdings.

6. For example, in 2014, Dr. Socolov made an additional FOIA request to the FBI for the "History of All FOIA Requests for Information" regarding Ms. Coplon and all aliases. The FBI's response to that request revealed that in April 2011, in response to another FOIA request seeking documents related to Ms. Coplon, the FBI had estimated or reviewed 21,250 responsive pages—some six thousand pages more than the number of pages it had identified as responsive to Dr. Socolov's much broader requests. This calls into question both the adequacy and the consistency of the FBI's search for responsive documents.

7. In the seventy years that have elapsed since Ms. Coplon was first arrested, most (if not all) of the actors in the Coplon drama have passed. Cellphones, email, and other electronic communications have replaced the landlines, memoranda, letters, and teletypes of the 1940s and '50s. Law enforcement and intelligence agencies also have developed dramatically more sophisticated surveillance methods such that many, if not all, of the rudimentary (and often illegal) surveillance techniques employed by the FBI with respect to Ms. Coplon are well known and long outdated today. The federal government declassified the VENONA Project itself in 1995. Nevertheless, the FBI has withheld or redacted well over 1,300 documents, including on the grounds that their production today would supposedly reveal confidential surveillance methods and sources.

8. Congress enacted FOIA "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976). Through FOIA, Congress set out a "new conception of Government conduct," defined by "a general philosophy of full agency disclosure." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 16 (2001) (quotation marks omitted). This transparency is "vital to the functioning of a

democratic society, needed . . . to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). “Therefore, in judging agencies’ attempts to withhold information, courts use a ‘strong presumption in favor of disclosure.’” *Cooper Cameron Corp. v. U.S. Dep’t of Labor, Occupational Safety & Health Admin.*, 280 F.3d 539, 545 (5th Cir. 2002) (quoting *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 360 (1976)). Moreover, the government bears the burden of proving that a FOIA exemption applies. *See* 5 U.S.C. § 552(a)(4)(B).

9. “In order to meet this burden in a typical FOIA case, the agency invoking the FOIA exemptions provides a document index, known as a *Vaughn* index, itemizing the documents withheld and the reasons for withholding each.” *Blum v. Nat’l Sec. Agency*, 2010 WL 11537459, at *2 (W.D. Tex. Apr. 12, 2010), *aff’d*, 424 F. App’x 358 (5th Cir. 2011). A *Vaughn* index applies to portions of documents—*i.e.*, redactions—as well. *See Batton v. I.R.S.*, 718 F.3d 522, 525 n.1 (5th Cir. 2013) (“A Vaughn index is a routine device through which the defendant agency describes the responsive documents withheld or redacted and indicates why the exemptions claimed apply to the withheld material” (quoting *Jones v. FBI*, 41 F.3d 238, 241 (6th Cir.1994))).

10. For the reasons set forth below, Dr. Socolov seeks declaratory and injunctive relief, including an order requiring (i) the production of documents previously withheld or redacted by the FBI and (ii) the submission of a *Vaughn* index, as well as such other relief as this Court deems just and proper.

Jurisdiction and Venue

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

12. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B) because Plaintiff is a resident of Austin, Texas, in this Division of this District.

Parties

13. Plaintiff, Dr. Emily Socolov, is Judith Coplon's only daughter. Dr. Socolov is a historian and folklorist. At present, Dr. Socolov is a Visiting Scholar at the University of Texas at Austin and is a resident of Austin, Texas. Dr. Socolov has taught at the University of Pennsylvania, the University of Texas, and Southwestern University; she serves on the Executive Board of the American Folklore Society; and she is a regular collaborator with the Smithsonian Institution's Division of Folklife and Cultural Heritage. Dr. Socolov is in the process of researching and drafting a book about her mother. In fact, her current appointment as Visiting Scholar at the University of Texas derives from the research project about her mother.

14. Defendant Department of Justice is a department of the Executive branch of the United States government and is an agency within the meaning of 5 U.S.C. § 552(f)(1). The Office of Legal Counsel ("OLC") and Office of Information Policy ("OIP") are components of the DOJ. Defendant FBI is a component of the DOJ, a department of the executive branch of the United States government, and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

Facts

Judith Coplon's Surveillance, Arrest, and Trial

15. Before her arrest and highly-publicized trials, Judith Coplon was an ordinary American citizen. Ms. Coplon was born in Brooklyn, New York, in 1921. She won a good-citizenship award in high school and a full scholarship to Barnard, from which she graduated cum laude in 1943. Thereafter, she was recruited into the DOJ's New York office, where she worked at the Economic Warfare Section established in the Antitrust Division to collect and disseminate information on enemy-controlled industrial operations. In 1945, as World War II drew to a close, the Section was downsized and Ms. Coplon was transferred to the newly-established Foreign Agents Registration Section ("FARS"), where she remained until her arrest in 1949.

16. Unbeknownst to Ms. Coplon (or anyone else outside a small inner circle), the U.S. Army's Signal Intelligence Service began intercepting and decrypting messages transmitted by Soviet intelligence agencies overseas in 1943. This counterintelligence endeavor was code-named VENONA, and it produced intelligence purporting to reveal, among other things, the identities of famous persons of the era, including Julius Rosenberg, code-named LIBERAL/ANTENNA, and Alger Hiss, code-named ALES.

17. The VENONA Project ran from 1943 to 1980. During its existence, the VENONA Project maintained the highest level of secrecy: the CIA was not officially briefed on it until 1953; and President Truman apparently never was. The FBI, however, was intimately involved with the VENONA Project beginning in 1947, confirming the identity of individuals mentioned in the deciphered cables in exchange for access to decrypted messages.

18. Decrypting Soviet cables in the 1940s was a difficult, iterative, and time-consuming process that often yielded both important gaps and many inconsistencies.

19. A top-secret internal memorandum written in 1956 by the head of the FBI's Espionage section, Alan H. Belmont (the "Belmont Memo"), stated:

[t]he messages [REDACTED] furnishes the Bureau are, for the most part, very fragmentary and full of gaps. Some parts of the messages can never be recovered again because during the actual intercept the complete message was not obtained. . . . It must be realized that the [REDACTED] cryptographers make certain assumptions as to meanings when deciphering these messages and thereafter the proper translation of Russian idioms can become a problem. It is for such reasons that [REDACTED] has indicated that almost anything included in a translation of one of these deciphered messages may in the future be radically revised.²

² See Ex. 1 (excerpts of FBI FOIA Release to Moynihan) at 66. A digitized version of the Belmont Memo is also available at <http://cryptome.org/fbi-nsa.htm>. The redactions appear on the face of the document and do not appear to have been applied by the FBI in the documents released to Senator Moynihan.

20. Despite internal reservations about the accuracy of the VENONA decrypts, the FBI investigated individuals that it suspected were Soviet agents—including Ms. Coplon—on the basis of the bits and snatches of information gleaned from the decrypted VENONA messages.

21. In December 1948, the FBI learned of a series of VENONA messages from 1944-1945 referring to an individual code-named “SIMA.” According to these decrypted messages, SIMA was a female DOJ employee who apparently had been approached by and was working with the KGB. Of particular concern to the Bureau was the messages’ suggestion that SIMA had access to FBI documents by virtue of her DOJ employment.³ The FBI concluded that Judith Coplon was “SIMA.”⁴ Without her knowledge, Ms. Coplon and her family were placed under physical and technical surveillance by order of Director Hoover himself, including monitoring her activities by dozens of FBI agents, listening through a microphone planted in her office, and wiretapping her home and office telephones. FBI documents that have been released pursuant to Dr. Socolov’s FOIA requests described the FBI’s surveillance techniques with precision.

22. Although the FBI concluded Ms. Coplon was likely a spy based on its surveillance, it lacked any concrete proof of such; so it devised a scheme to entrap her in the act of passing classified information. The scheme involved manufacturing a fake “highly classified” memorandum (the “Amtorg Memo”), which would be given to Ms. Coplon’s supervisor and casually shown briefly to Ms. Coplon.⁵

³ Ex. 2 (Jan. 8, 1945 VENONA Decrypt) (“On the basis of this preliminary information there is reason to assume that in her new job SIMA [Judith Coplon] will be able to carry out very important work for us in throwing light on the activities of the KhATA [FBI].”). The VENONA decrypts are available online on the NSA’s website. “VENONA,” National Security Agency, *available at* <https://www.nsa.gov/News-Features/Declassified-Documents/Venona/>.

⁴ *See, e.g.*, Ex. 3 (Dec. 31, 1948 Memo to Hoover) (“Information has been obtained from the Department which reflects that Sima is without doubt identical with Judith Coplon . . .”).

⁵ *See* Ex. 4 (Jan. 27, 1949 Memo From Special Agent H.B. Fletcher).

23. On March 4, 1949, Ms. Coplon took a train from Washington, D.C. to New York City, where she and Valentin Gubitchev, a Soviet national working for the United Nations, were tailed for hours and then arrested by FBI agents. Although Ms. Coplon's handbag contained 34 FBI data slips summarizing the contents of specific FBI reports as well as notes on the Amtorg Memo, the documents never left Ms. Coplon's handbag and none were found to have changed hands. Despite not having a warrant for her arrest or to search Ms. Coplon's personal property, the FBI nonetheless seized and reviewed the contents of her handbag.

24. After her arrest, Ms. Coplon was indicted in New York for (i) conspiracy to defraud the United States; (ii) attempting to transmit documents relating to the national defense to an individual who was not entitled to receive them; and (iii) attempting to transmit documents relating to the national defense to an individual with the intent and reason to believe that they would be used to the injury of the United States and to the advantage of a foreign nation. Two weeks later, Ms. Coplon was indicted on similar charges in Washington, D.C.

25. Despite maintaining her innocence from the day of her arrest, Ms. Coplon was tried and convicted in both New York and Washington, D.C. The Washington, D.C. trial lasted more than two months and was closely monitored by contemporary media.⁶ Given the highly secret nature of the VENONA Project at that time (including it being kept from the CIA and President Truman), neither the FBI nor the prosecution could afford to reveal the VENONA Project's existence by introducing the decrypted messages into evidence at trial. As the Belmont Memo later explained, in regards to whether the government should retry Ms. Coplon:

In the first place, we do not know if the deciphered messages would be admitted into evidence and if they [were] not, that would abruptly end any hope for prosecution. It is believed that the defense attorney

⁶ See, e.g., Charles Grutzner, *The Issues in the Coplon-Gubitchev Case*, N.Y. TIMES (Jan. 22, 1950), available at <https://timesmachine.nytimes.com/timesmachine/1950/01/22/84647290.pdf>.

would immediately move that the messages be excluded, based on the hearsay evidence rule.

* * *

Assuming that the messages could be introduced in evidence[,] . . . [t]he fragmentary nature of the messages themselves, the assumptions made by the cryptographers in breaking the messages, and the questionable interpretations and translations involved, plus the extensive use of cover names for persons and places, make the problem of positive identification extremely difficult. Here, again, reliance would have to be placed on the expert testimony of the cryptographers and it appears that the case would be entirely circumstantial.⁷

Nor could the FBI or the prosecution admit that “evidence” supposedly corroborating Ms. Coplon’s guilt resulted from the FBI’s illegal surveillance of Ms. Coplon, which continued after her arrest and even included conversations with her lawyer, Archibald Palmer. Instead, the FBI euphemistically (but falsely) identified their source as a confidential informant, code-named “TIGER.”

26. Things began to unravel for the FBI with the revelation of TIGER’s true nature. During Ms. Coplon’s first trial, the FBI agents who had surveilled her denied knowledge of the illegal wiretaps under oath. During the pre-trial hearing for Ms. Coplon’s second trial, however, the FBI agents admitted to extensive use of such wiretaps and an October 31, 1949 memorandum signed by J. Edgar Hoover both confirmed the wiretaps and indicated that the recordings had been intentionally destroyed to avoid having to reveal their existence (the “TIGER Memo”).

27. Ms. Coplon’s well-publicized trials revealed other lurid details about the FBI’s unlawful practices. For instance, through illegal wiretaps, the FBI learned of an affair between Ms. Coplon and a DOJ lawyer, which information was introduced at Ms. Coplon’s trial in an effort to undermine her credibility and character. And the data slips whose contents were read into the records, over the FBI’s (and J. Edgar Hoover’s) strenuous objections, resulted in the revelation that

⁷ See Ex. 1 (excerpts of FBI FOIA Release to Moynihan) at 70.

the FBI had also been keeping tabs on several high profile Hollywood celebrities suspected of being Communists.

28. The public spectacle of Ms. Coplon's trials helped set the tone for the notorious McCarthy hearings and the culture of Cold War paranoia that swept the nation. Senator McCarthy delivered his infamous "Enemies Within" speech in which he purported to have a "list" of known Communists working for the State Department in the midst of Ms. Coplon's trials.

29. Ms. Coplon was the first American citizen convicted of spying for the Soviets. She was sentenced to twenty-five consecutive years in federal prison, but never served any part of her sentence, as both convictions were appealed and ultimately were set aside based, at least in part, on the FBI's illegal surveillance and possible entrapment.

30. Following her trials, Ms. Coplon lived in relative obscurity. She married one of her lawyers, Albert Socolov, a decorated D-Day veteran, raised four children, earned a master's degree in education, edited several books, and tutored women in prison. Despite her highly publicized ordeal, Ms. Coplon refused to discuss the trials, either in public or even in the privacy of her own home. As her daughter, Dr. Socolov, recounted in her mother's 2011 *New York Times* obituary, "[t]he subject of her innocence or guilt was something that she would strictly not address."⁸ But even as time passed, the ordeal continued to haunt Ms. Coplon: "If she felt somebody was looking at her askance or treating her disparagingly," Dr. Socolov recounted, "she thought about that case."⁹

31. In 1995, forty-five years after Ms. Coplon's trials, the Senate bipartisan Commission on Government Secrecy declassified the VENONA Project, acknowledging that "public release of the VENONA intercepts in 1995 provided an unprecedented glimpse into the world of codes and

⁸ Sam Roberts, *Judith Coplon, Haunted by Espionage Case, Dies at 89*, N.Y. TIMES (Mar. 1, 2011), *available at* <https://www.nytimes.com/2011/03/02/us/02coplon.html>.

⁹ *Id.*

codebreaking and revealed new insights into controversial aspects of our nation's history.” In other words, the historical value of uncovering the VENONA Project's existence, methods, and revelations outweighed any supposed or theoretical benefits of continued classification, despite its having been so secret that both the CIA and the President of the United States had been kept in the dark about it. As another two decades have passed since VENONA's declassification, that rationale applies even more forcefully to the records Dr. Socolov here seeks.

32. After Ms. Coplon's death in 2011, Dr. Socolov set out to research and chronicle her mother's trials and tribulations as an accused Soviet spy during the throes of the Red Scare, including by filing two FOIA requests—one in 2012, and the other in 2013—which are discussed in greater detail, below.

33. In response to these requests, the FBI proceeded in a leisurely fashion to make seventeen releases, spaced out over several years. Unfortunately, many of the released documents contain heavy (and often inconsistent) redactions that render the underlying contents incomprehensible and virtually unreadable, while others have been withheld in their entirety. The FBI purports to have withheld or redacted these documents on the basis of certain FOIA exemptions, including (i) supposed concerns over “national security,” (ii) preventing disclosure of law enforcement and surveillance techniques that are now anywhere from 50 to 70 years old, and (iii) protecting the identities of supposedly confidential sources, who were adults in the 1940s, and who now are either known to be dead or unlikely to be alive.

Dr. Socolov's FOIA Requests

The First Request (FOIPA Request No. 1192062-001)

34. On June 1, 2012, Dr. Socolov filed a FOIA request with the DOJ (the “First Request,” attached hereto as Exhibit 5).¹⁰

35. In the First Request, Dr. Socolov asked for “all files related to [her] mother, Judith Coplon” during the time period of 1935-2012, so as to cover the events leading up to Ms. Coplon’s arrest and any files maintained thereafter. Because Ms. Coplon’s movements and conversations were monitored in both New York and Washington, D.C., Dr. Socolov wanted to capture all records of the FBI’s surveillance.

36. The First Request provided Ms. Coplon’s maiden name, married name, date of birth, and date of death, and attached a copy of Ms. Coplon’s death certificate.

37. The First Request asked that “the FBI’s indices to the Central Records System” be searched for information responsive to the Request. The First Request provided a non-exhaustive list of potential sources to be searched, including the FBI’s “main headquarter files, Washington and New York Field office files, [and] Electronic Surveillance Files,” as well as “J. Edgar Hoover’s files of illegal surveillance.”

38. On June 4, 2012, the FBI acknowledged receipt of the First FOIA Request.

The Second Request (FOIPA Request No. 1192062-002)

39. On March 28, 2013, Dr. Socolov filed a second FOIA request (the “Second Request,” attached hereto as Exhibit 6).¹¹

¹⁰ The First Request was originally assigned “FOIPA Request No. 1192062-000” and, as discussed below, the FBI provided an estimated number of pages in response to that request. The FBI later informed Dr. Socolov that that estimate was mistaken and, in response, closed FOIPA Request No. 1192062-000 and reopened the First Request as “FOIPA Request No. 1192062-001.” As such, the “First Request” refers to FOIPA Request No. 1192062-001.

40. In the Second Request, Dr. Socolov asked additionally for “all records on or pertaining to a person referred to as ‘Sima’ and any other aliases, names, code names and all logical variations thereof from all sources that may be relevant to her.” Dr. Socolov noted that “Sima” was “an alias or code name that the [FBI] and possibly other government agencies” had used to refer to her mother, Ms. Coplon.

41. The Second Request again included Ms. Coplon’s maiden and married names. The Second Request also reiterated the fact that Ms. Coplon was deceased and re-attached a copy of her death certificate.

42. In addition to the FBI’s main headquarters and field office files—and in an abundance of caution (given the already broad scope of the First Request)—the Second Request specified that the search include the records systems set forth in *Negley v. F.B.I.*, 658 F. Supp. 2d 50, 57 n.3 (D.D.C. 2009), such as the Investigative Case Management (which allows for index searches and contains documents related to administrative management of cases); Electronic Case file (which contains all FBI-generated documents and is full-text searchable); Electronic Surveillance indices; the relevant field offices’ card systems; handwritten notes; personal files; restricted documents; and “any special indices or other indices maintained by any division, section, office, bureau, resident or other component of the FBI.”

43. The Second Request also asked for “all previous requests for information on Sima and all correspondence pertaining thereto, including not only [FOIA] requests but congressional, news media or other requests,” as well as “requests submitted by The Office of the United States Attorney for the Southern District of New York.”

44. On April 23, 2013, the FBI acknowledged receipt of the Second Request.

¹¹ The FBI assigned “FOIPA Request No. 1192062-002” to Dr. Socolov’s Second Request.

45. As discussed below, on June 27, 2013, the OIP informed Dr. Socolov that the FBI had “re-open[ed]” the First Request for additional searching and processing. The “re-opened request” was assigned FOIPA Request No. 1192062-002 (*i.e.*, the Second Request). The FBI made all subsequent document releases to Dr. Socolov under FOIPA Request No. 1192062-002. The Second Request is, therefore, the operative request.

The Declassification Request
(FOIPA Request No. 1321594-000)

46. On December 8, 2014, Dr. Socolov filed a third FOIA request (the “Declassification Request,” attached hereto as Exhibit 7).¹²

47. In the Declassification Request, Dr. Socolov asked for “any and all information that pertains and/or reflects the history of any and all requests made pursuant to FOIA related to Judith Socolov née Coplon aka ‘Sima’” as well as “any and all information that pertains to and/or reflects declassifications of all and any files also related to Judith Socolov née Coplon aka ‘Sima’.”

48. On September 24, 2015, in response to the Declassification Request, the FBI released documents to Dr. Socolov pertaining to prior FOIA requests concerning Judith Coplon. The documents produced in response to the Declassification Request call into question the adequacy of the FBI’s search for responsive documents in connection with Dr. Socolov’s First and Second Requests.

49. In particular, Dr. Socolov learned that in April 2011, a year before making her First Request, an academic named Stephen Underhill had requested “all file numbers and corresponding

¹² The FBI assigned “FOIPA Request No. 1321594-000” to Dr. Socolov’s Declassification Request. Dr. Socolov is not presently challenging either the adequacy of the search conducted by the FBI with respect to the Declassification Request or the propriety of the redactions or withholdings of any documents released pursuant to the Declassification Request – but she is not waiving her right to make such challenges in the future, and she reserves all such rights.

files in [the FBI's] custody pertaining to Judith Coplon.”¹³ Despite his much less particularized request, the FBI informed Dr. Underhill only a few months later in August 2011 that it had located approximately 21,250 pages ostensibly responsive to his request—far more than it identified in response to Dr. Socolov’s First and Second Requests—calling into question the adequacy of the FBI’s search for documents responsive to Dr. Socolov’s Second Request.¹⁴

50. More troubling still was the FBI’s response to a FOIA request concerning simply “Judith Coplon” filed by Thomas and Marcia Mitchell in 2001. The Mitchells co-authored a book on Judith Coplon¹⁵ based in part on the documents they received from the FBI in response to their FOIA request as well as Mr. Mitchell’s firsthand experience as a former FBI agent surveilling Ms. Coplon. In response to the Declassification Request, the FBI released a document pertaining to the Mitchells’ FOIA request containing the following handwritten note:

Open new
Assign to RR877
Do not acknowledge
CB¹⁶

No other indication was provided as to the total number of responsive pages relative to the Mitchells’ request. The FBI failed to explain this cryptic text but the phrase, “Do not acknowledge,” raises the specter that the FBI may have been more accommodating to a FOIA request filed by a former employee involved in the surveillance than one filed by the daughter of the suspected Soviet spy that he had surveilled. In any event, it calls into question the adequacy of the FBI’s search for documents responsive to Dr. Socolov’s Second Request.

¹³ Ex. 8 (excerpt from Declassification Request Release 1) at 2.

¹⁴ *Id.* at 9.

¹⁵ Marcia and Thomas Mitchell, *The Spy Who Seduced America*, Invisible Cities Press (2002).

¹⁶ Ex. 8 (excerpt from Declassification Request Release 1) at 1.

The FOIA Exemptions Invoked by the FBI

51. Exemption 3 of FOIA (the “Statutory Exemption”) provides that the Government may withhold information that is “specifically exempted from disclosure by statute . . . , provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3). The FBI invoked two statutes as a basis of withholding or redacting otherwise responsive documents: Rule 6(e) of the Federal Rules of Criminal Procedure, which protects the secrecy of grand jury proceedings¹⁷ and the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods.

52. Exemption 6 of FOIA (the “Third Party Personal Privacy Exemption”) provides that the Government may withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6).

53. Exemption 7(C) of FOIA (the “Law Enforcement Personal Privacy Exemption”) provides that the Government may withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).

54. Exemption 7(D) of FOIA (the “Law Enforcement Confidential Source Exemption”) provides that the Government may withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to disclose the identity of a confidential source,

¹⁷ Dr. Socolov does not challenge the validity of the FBI’s reliance on the FOIA exemption that protects the secrecy of grand jury proceedings. While Dr. Socolov acknowledges that the FBI is prohibited from releasing grand jury information in light of FRCP 6(e) without a court order, she does not waive her right to petition the appropriate court to seek disclosure of Judith Coplon grand jury information.

including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.” 5 U.S.C. § 552(b)(7)(D).

55. Exemption 7(E) of FOIA (the “Law Enforcement Techniques Exemption”) provides that the Government may withhold “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E).

56. Defendants’ reliance on these exemptions is inappropriate on multiple levels.

57. As an initial matter, Defendants failed to explain how cited exemption(s) applied to particular documents. Conclusory invocations of exemptions do not meet the requirements of FOIA. For example, Defendants’ invocation of Exemptions 7(D) and 7(E) to justify withholding and redacting responsive material is particularly untenable given the declassification of the VENONA Project in 1995 and the vast changes in both law enforcement and technology in the seventy years since Ms. Coplon’s surveillance, arrest, and prosecution. The advent of computers, the internet, email and mobile devices, and the attendant monitoring technology, among other advances, rendered obsolete the rudimentary physical and technical surveillance techniques employed by the FBI and the American intelligence community nearly seventy years ago. Contrast, for example, the NSA’s VENONA Project, which involved the laborious process of using printed codebooks for decrypting diplomatic messages by hand, with the NSA’s PRISM program, the existence of which

came to light in 2013, which allowed the NSA to capture and monitor enormous quantities of email, internet chat, and other online data. Although the FBI participated in both programs, the FBI's attendant surveillance of Ms. Coplon in the 1940s—which involved primarily physical surveillance, decoy paper memoranda, and illegal landline wiretaps—doubtless bears no resemblance to the FBI's current surveillance methods. But to the extent they do (*e.g.*, in-person surveillance, microphone “bugs,” and landline wiretaps), those techniques are far from secret: they are well-known to anyone who has watched a Cold War spy movie (or an episode of “The Americans”).

58. Second, it is a matter of public record that most (if not all) of the actors in this drama have long since passed. Ms. Coplon, who was in her late twenties during the events at issue, is dead. J. Edgar Hoover, Robert Lamphere, Robert Granville, Alan Belmont, and other key FBI agents have likewise passed away.¹⁸ Judges Learned Hand, Simon Rifkind, Albert Reeves, and other figures from Ms. Coplon's trials are similarly deceased.¹⁹ So, too, are countless others referenced in the documents that Dr. Socolov seeks. For example, several of the individuals whose names were redacted in certain documents (but were not redacted in others) are known to be deceased (as confirmed by a quick Google search²⁰), including:

¹⁸ See, *e.g.*, Douglas Martin, *Robert J. Lamphere, 83, Spy Chaser for the F.B.I., Dies*, N.Y. TIMES (Feb. 11, 2002), available at <https://www.nytimes.com/2002/02/11/us/robert-j-lamphere-83-spy-chaser-for-the-fbi-dies.html>.

¹⁹ See, *e.g.*, *Albert L. Reeves Is Dead at 97; U.S. Judge Sat in Coplon Case*, N.Y. TIMES (Mar. 26, 1971), available at <https://www.nytimes.com/1971/03/26/archives/i-albert-l-reeves-is-dead-at97-us-judge-sat-in-coplon-case.html>.

²⁰ See, *e.g.*, *Obituary: Howard Shapiro*, THE WASHINGTON POST, available at https://www.washingtonpost.com/archive/local/2003/05/31/obituaries/5b570080-fe2a-4745-929e-4cf8ef428fba/?utm_term=.b551987e5eaf.

(a) Howard Shapiro: A teletype produced in Release 1 redacted the name Howard Shapiro, the DOJ attorney with whom Ms. Coplon had an affair, citing Exemptions 6 and 7(C)—but a nearly identical document produced in Release 2 did not.²¹

(b) Beatrice Walfish: A memorandum produced in Release 1 redacted the name Beatrice Walfish, a colleague of Ms. Coplon at Barnard and the DOJ, citing Exemptions 6 and 7(C)—but a nearly identical version produced in Release 2 did not.²² Numerous other individuals' names are likewise redacted but then produced in such an inconsistent manner.

(c) Stanley Leonard Temko: A teletype produced in Release 1 containing a list of all the individuals referred to in Ms. Coplon's diary redacted the name of Stanley Leonard Temko, citing Exemptions 6 and 7(C)—but a nearly identical document produced in Release 6 did not.²³ Numerous other individuals' names are likewise redacted but then produced in such an inconsistent manner.

(d) Marion Davis: A memorandum produced in Release 1 redacted the name Marion Davis, a fellow Barnard alumna and the Soviet agent code-named LOU mentioned in the VENONA decrypts, citing Exemptions 6 and 7(C)—but a nearly identical version of the same document produced in Release 6 did not redact her name.²⁴ The memorandum produced in Release 1 further redacted Ms. Davis's code-name, LOU, which itself is a matter of public record and should not have been redacted.²⁵

Yet the FBI has cited supposed “personal privacy” concerns as a basis for inappropriately (and inconsistently) redacting names from documents.

²¹ Compare Ex. 9A (redacted version Jan. 31, 1949 Scheidt Teletype produced in Release 1), *with* Ex. 9B (unredacted version produced in Release 2).

²² Compare Ex. 10A (redacted version of Mar. 3, 1949 SAC Teletype produced in Release 1), *with* Ex. 10B (unredacted version produced in Release 2).

²³ Compare Ex. 11A at 13 (redacted version of Jan. 21, 1949 Teletype produced in Release 1), *with* Ex. 11B at 13 (unredacted version produced in Release 6). In addition to inconsistently redacting other names in these documents, the FBI inconsistently redacted the names of its supposed “confidential” and source: “C dash four six eight” in these two documents. Ex. 11B at 7.

²⁴ Compare Ex. 12A (redacted version of Jan. 4, 1949 SAC Memo produced in Release 1), *with* Ex. 12B (unredacted version of Jan. 4, 1949 SAC Memo produced in Release 6).

²⁵ See Ex. 13 at 2 (Jan. 15, 1945 VENONA Decrypt) (identifying “LOU” as “Marion Davis Berdecio”). Moreover, the FBI need not protect Ms. Davis's identity, whom the FBI determined was a Soviet spy. Similarly, given the FBI's prior misleading references to a “confidential source” at Ms. Coplon's trial—the informant “TIGER” did not exist at all and rather was, in actuality, an illegal wiretap—serious questions exist as to whether all of the “individuals” whose “names” are redacted from the released documents ever even existed, much less had an identity to protect.

59. Third, the Releases are rife with other inconsistent and inexplicable redactions and withholdings. For example, the Marion Davis memorandum produced in Release 1 revealed the code-name of the FBI's supposedly confidential informant ("NYC-53") and his identity ("H.C. Staub, attorney for Western Union in New York City")—but the FBI later redacted only the code-name in Release 6, citing Exemption 7(D)—the "Law Enforcement Confidential Source Exemption."²⁶ Similarly, despite releasing the Belmont Memo (albeit, with redactions) in response to former Senator Daniel Patrick Moynihan's FOIA request in 1999 and then publishing it on its website,²⁷ the FBI failed to produce the Belmont Memo to Dr. Socolov. Moreover, a publication available on the FBI's website chronicling the Bureau's involvement in the VENONA Project describes "a May 15, 1950 memo from Mr. Belmont," which "presented a brief summary of investigative developments through the Venona traffic," and "related how Venona had set the Bureau on the trail of a number of other Soviet agents including . . . Judith Coplon."²⁸ The FBI released this document pursuant to Senator Moynihan's FOIA request and published it on its website²⁹—but again, failed to produce that document to Dr. Socolov. These omissions establish the inadequacy of the FBI's search for responsive documents to Dr. Socolov's Second Request.

60. Similarly, the FBI produced the bogus Amtorg Memo used to bait Ms. Coplon—but inexplicably redacted its deliberately and inherently false contents. Moreover, the Amtorg Memo has been a publicly available document since the DOJ filed a version of it (albeit not the same version

²⁶ Compare Ex. 12A at 2 (redacted version of Jan. 4, 1949 SAC Memo produced in Release 1), with Ex. 12B at 2 (unredacted version of Jan. 4, 1949 SAC Memo produced in Release 6).

²⁷ See Ex. 1 (excerpts of FBI FOIA Release to Moynihan) at 61, *available at* <https://vault.fbi.gov/Venona>.

²⁸ John F. Fox, Jr., *In the Enemy's House: Venona and the Maturation of American Counterintelligence*, (2005), *available at* <https://www.fbi.gov/history/history-publications-reports/in-the-enemys-house-venona-and-the-maturation-of-american-counterintelligence>.

²⁹ Ex. 1 (excerpts of FBI FOIA Release to Moynihan) at 4, *available at* <https://vault.fbi.gov/Venona>.

produced in redacted form to Dr. Socolov) as an exhibit during Ms. Coplon's trial in the Southern District of New York seventy years ago.³⁰ Indeed, the FBI produced excerpts from Ms. Coplon's New York trial transcript to Dr. Socolov, which reveal that the Amtorg Memo was introduced as a trial exhibit and its author, FBI agent Robert Lamphere, read significant portions of it into the record.³¹ There was no basis to redact the Amtorg Memo; and the withholding of its otherwise publicly-available contents casts further doubt on the propriety and credibility of the FBI's productions, redactions, and withholdings of responsive documents to Dr. Socolov's Second Request.³²

61. The FBI also improperly redacted significant portions of the data slips found in Ms. Coplon's purse, citing Exemption 7(D). The FBI first produced heavily redacted facsimiles of the data slips in Release 13. One such data slip with the subject "Philip Levy" reveals that a purported confidential source, code-named "T-2," "reported that he [T-2] learned in May of 1945, [that] subject's brother," before redacting the remaining text on the basis of Exemption 7(D).³³ But this data slip has been a matter of public record and for over seventy years: during Ms. Coplon's New York trial, her attorney read the contents of the data slips into the record over the strenuous objections of the prosecution, who argued vehemently that national security concerns warranted their exclusion;³⁴ and an unredacted copy of this particular data slip was introduced as an exhibit

³⁰ Compare Ex. 14A (redacted version of Amtorg Memo), with Ex. 14B (unredacted version used as an exhibit in Ms. Coplon's New York trial).

³¹ Ex. 15 (Nov. 15, 1949 Lamphere Testimony on Wiretap Motion).

³² The FBI did not produce the Amtorg Memo in its entirety until 2017—after consulting with another government agency, years after producing the original redacted version of the Amtorg Memo in Release 1.

³³ Ex. 16A (excerpt of redacted version of Philip Levy Data Slip produced in Release 13).

³⁴ The New York Times reported at that time on the "wide range of topics" covered in the data slips found in Ms. Coplon's purse. See Charles Grutzner, *Coplon Data Slips Offered in Court*, N.Y. TIMES

during Ms. Coplon's Washington, D.C. trial.³⁵ Moreover, the FBI produced a memorandum in Release 1, which reveals the entire contents of this data slip.³⁶ Indeed, the unredacted text of this data slip reveals the observation that Philip Levy's brother "entered the vountry [sic] having in his possession five packages of \$1,000 each in \$20 bills" and "that this denomination has frequently been used in Soviet espionage payoffs." Given the nature of the text, and the fact that the Soviet Union collapsed thirty years ago, the assertion of continued confidential treatment is untenable. The inconsistency and lack of basis is further established by the fact that although the FBI reproduced facsimiles of the data slips in June 2016 after remanding for review and re-processing, they maintained the identical redaction and exemption over the Philip Levy data slip itself.³⁷

62. These internal inconsistencies and contradictions, whether a matter of administrative oversight or deliberate decision-making, undermine both the legal rationales and factual bases supposedly justifying the FBI's withholding of documents and information from Dr. Socolov. The record suggests that the FBI repeatedly made rote redactions and invoked FOIA exemptions, without making *bona fide* efforts to see if there was actually any basis for doing so.

(Mar. 1, 1950), *available at* <https://www.nytimes.com/1950/03/01/archives/coplon-data-slips-offered-in-court-excerpts-from-fbi-reports-seized.html>.

³⁵ Ex. 16B (excerpt of unredacted Philip Levy Data Slip from Ms. Coplon's Washington, D.C. trial).

³⁶ Ex. 17A (unredacted Mar. 21, 1949 Memo from L. Whitson to H.B. Fletcher re Info in Data Sheet-Levy produced in Release 1). Inexplicably, the FBI later reproduced the identical document with new redactions. *Compare id.* with Ex. 17B (Mar. 21, 1949 Memo from L. Whitson to H.B. Fletcher re Info in Data Sheet-Levy produced in Release 13).

³⁷ Ex. 16C (excerpt of redacted version of Philip Levy Data Slip produced in First Supplement Release 13).

Agency Responses & Administrative Appeals

Hardcopy Release 1 and Appeal

63. On June 11, 2012, the FBI wrote a letter to Dr. Socolov indicating that it had 1,012 pages of documents available for release in response to the First Request. The FBI later advised that this estimate was incorrect due to an administrative oversight. The FBI closed this request (assigned FOIPA Request No. 1192062-000) and reopened it under FOIPA Request No. 1192062-001.

64. On July 16, 2012, the FBI wrote a letter to Dr. Socolov (attached hereto as Exhibit 18) indicating that it was releasing 2,158 pages of hardcopy documents in response to the First Request (“Hardcopy Release 1”). The letter indicated that the documents were not being released in digital form as requested by Dr. Socolov due to “technical difficulties.” A release on a CD would have been a free service, while hardcopy releases customarily carry a charge, which was waived given the FBI’s inability to comply with the request for a digital release. The letter did not invoke (or mention) any FOIA exemptions.

65. On September 11, 2012, Dr. Socolov filed an administrative appeal of Hardcopy Release 1 with the OIP (the “First Appeal”).

66. On September 27, 2012, the OIP acknowledged receipt of the First Appeal and assigned the appeal number AP-2012-03437.

67. On April 4, 2013, the New York Civil Liberties Union (“NYCLU”) sent a letter to the OIP on behalf of Dr. Socolov to supplement the points raised in the First Appeal.

68. On June 27, 2013, the OIP responded to the First Appeal indicating that the FBI had agreed to re-open Dr. Socolov’s request for additional searching and processing. The re-opened request was assigned FOIPA Request No. 1192062-002.

69. The FBI made all subsequent document releases to Dr. Socolov under FOIPA Request No. 1192062-002, which includes all documents released in response to the First Request,

making the Second Request the operative request. As such, Dr. Socolov challenges the adequacy of the FBI's search for responsive documents and the propriety of the FBI's withholdings and redactions with respect to the Second Request only (and alleges facts regarding the First Request for the sake of completeness).

70. The OIP's response to the First Appeal also stated that "[t]he FBI properly withheld certain information" pursuant to the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, Rule 6(e) of the Federal Rules of Criminal Procedure, which protects the secrecy of grand jury proceedings);
- **Exemption 6** (the Third Party Personal Privacy Exemption);
- **Exemption 7(C)** (the Law Enforcement Personal Privacy Exemption); and
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption).

71. On July 11, 2013, in response to the "re-opened request," Dr. Socolov asked the FBI to "produce any and all responsive information and records in their entirety," including "all attachments, photographs and enclosures to such responsive information and records." Dr. Socolov also asked the FBI for confirmation that the hardcopy documents made available pursuant to Hardcopy Release 1 would be reproduced in electronic format and that those documents would be reproduced "in their entirety."

72. On August 9, 2013, the FBI informed Dr. Socolov that it would not conduct any further searching unless payment was received.

73. For the next several months, Dr. Socolov and the FBI engaged in back-and-forth communications concerning a fee waiver for the release of these documents. Dr. Socolov argued that a fee waiver was proper under 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure of the information was "in the public interest" and would "contribute significantly to public understanding of the operations or activities of the government."

Electronic Release 1

74. On February 5, 2014, while the fee waiver issue remained unresolved, the FBI wrote a letter to Dr. Socolov (attached hereto as Exhibit 19) indicating that it was releasing 2,057 pages of documents in electronic form in response to “FOIPA Request No. 1192062-002” (“Electronic Release 1”).³⁸

75. Electronic Release 1 consisted of electronic copies of the same hard copy documents that the FBI had released to Dr. Socolov on July 16, 2012. Although the FBI did not explain the page discrepancy between Electronic Release 1 and Hardcopy Release 1, on information and belief, the balance of the pages from Hardcopy Release 1 missing from Electronic Release 1 appear to have been either (i) duplicates of other pages produced in the hardcopy version of Release 1; (ii) pages that were ultimately released in subsequent releases; and/or (iii) blank pages.

76. The documents produced pursuant to Electronic Release 1 were heavily redacted, and some contained virtually no content whatsoever.

77. For example, the FBI produced an April 27, 1949 memorandum sent to Director Hoover “reflect[ing] a check of the indices of the Washington Field Office concerning the jurors selected for” Ms. Coplon’s Washington, D.C. trial with its contents extensively redacted pursuant to the Third Party Personal Privacy and Law Enforcement Personal Privacy Exemptions. However, the FBI produced a near identical version of the same document in unredacted form in Release 11.³⁹

78. Relatedly, the Electronic Release 1 documents also redacted a number of names that are not redacted in nearly identical documents produced in later releases. For example, a teletype produced in Release 1 redacted the name Lidiya Gubitcheva, the wife of Ms. Coplon’s alleged co-

³⁸ All exhibit references to “Release 1” contained herein refer to documents produced pursuant to Electronic Release 1—that is, documents electronically produced by the FBI on February 5, 2014.

³⁹ Compare Ex. 20A (redacted version of Apr. 27, 1949 G. Hottel Memorandum to Director produced in Release 1) with Ex. 20B (unredacted version produced in Release 11).

conspirator, as well as the code-name of a supposed “confidential informant,” designated NYT FOUR SIX EIGHT, citing Exemptions 6, 7(C), and 7(D), while a substantially similar teletype produced in Release 2 did not.⁴⁰ Similarly, a memorandum produced in Electronic Release 1 redacted the names Shirley and David Aranow, as well as the code-name of a supposed “confidential informant,” designated NYT FIVE ONE TWO, citing Exemptions 6, 7(C), and 7(D), but substantially similar teletypes produced in Releases 2 and 7 did not.⁴¹ Shirley Aranow was a colleague of Ms. Coplon’s at Barnard and the DOJ whom the FBI had erroneously suspected of having recruited Ms. Coplon under the code-name ZORA, referred to in the VENONA decrypts.

79. The FBI’s invocations of Exemptions 6 (the Third Party Personal Privacy Exemption), 7(C) (the Law Enforcement Personal Privacy Exemption), and 7(D) (the Law Enforcement Confidential Source Exemption) are inappropriate grounds to redact the names of individuals whose names are otherwise disclosed.

80. While it is possible that the FBI ameliorated some of the improper redactions in Electronic Release 1 by revealing the previously-withheld names in subsequent releases, many of the documents are not identical versions of the documents that were produced and redacted in Electronic Release 1. Furthermore, it is unclear how many of the released documents include redactions of the names of these or other individuals. Additionally, many of the individuals whose names are redacted are now known to be deceased.

⁴⁰ Compare Ex. 21A at 3 (redacted version of Jan. 15, 1949 Scheidt Teletype produced in Release 1), with Ex. 21B at 2 (unredacted version produced in Release 2). The teletype produced in Release 2 also mentions “Confidential Informant NYT FOUR SIX EIGHT,” which was redacted in Release 1.

⁴¹ Compare Ex. 22A at 1-2 (redacted version of Feb. 25, 1949 SAC Teletype produced in Release 1), with Ex. 22B at 1-2 (unredacted version produced in Release 2), and Ex. 22C at 1 (unredacted version produced in Release 7).

81. On May 15, 2015, in a letter responding to a subsequent appeal (discussed below), the OIP granted Dr. Socolov's request for a fee waiver, tacitly acknowledging the historical value of, and public interest in, the requested documents. Additionally, this prompted the FBI to add a page about Ms. Coplon to their website, which provides the public with digitized versions of all of the documents heretofore released to Dr. Socolov.⁴² The FBI does not appear to have similarly published to its website the documents produced in response to the FOIA request made by the Mitchells.

Release 2 and Appeal

82. On October 30, 2014, the FBI notified Dr. Socolov that it was releasing an additional 570 pages of the 785 pages it had reviewed, in response to "FOIPA Request No. 1192062-002" ("Release 2").

83. In the cover letter for Release 2 (attached hereto as Exhibit 23), the FBI invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, Rule 6(e) of the Federal Rules of Criminal Procedure, which protects the secrecy of grand jury proceedings);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI also noted, without further elaboration, that: (i) "[d]ocument(s) were located which originated with, or contained information concerning, other Government agencies [sic]"; (ii) "[t]his information has been referred to the OGA for review and direct response to you"; and that (iii) the FBI was "consulting with OGA(s)" and "will correspond with you regarding this information when the consultation is finished."

⁴² FBI Records: The Vault – Judith Coplon, available at <https://vault.fbi.gov/judith-coplon>.

84. As with Release 1,⁴³ the documents produced in Release 2 were heavily redacted, including redactions that were inconsistent with near-identical versions of documents already produced in Release 1. For example, a memorandum produced in Release 2 redacted the name and address of Marian Raff (née Marian Gore), a contemporary of Ms. Coplon's at Barnard, but a near identical copy of the same document previously produced in Release 1 did not.⁴⁴ Further, the FBI invoked Exemption 7(D)—“Law Enforcement Confidential Source Exemption”—as the basis for redacting Ms. Raff's name and address, but it did not provide a basis for doing so, nor does the document itself refer to Ms. Raff as an FBI informant.

85. On December 22, 2014, the NYCLU filed an administrative appeal of Release 2 with the OIP on behalf of Dr. Socolov (the “Second Appeal”).

86. On December 30, 2014, the OIP acknowledged receipt of the Second Appeal and assigned the appeal number AP-2015-01199.

87. On May 15, 2015, the OIP responded to the Second Appeal affirming the FBI's actions with respect to Release 2. The OIP's response stated that “[t]he FBI properly withheld certain information” pursuant to the following FOIA exemptions:

- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

88. With respect to the adequacy of the FBI's search for responsive records, the OIP advised that the FBI had not yet completed its interim releases and, thus, that it would be premature to adjudicate the adequacy of the FBI's search.

⁴³ Hereinafter, all references to “Release 1” refer to the documents produced pursuant to Electronic Release 1.

⁴⁴ Compare Ex. 24A (redacted version of Feb. 1, 1949 Raff Memo produced in Release 2), with Ex. 24B (unredacted version produced in Release 1).

Releases 3, 4, and 5 and Appeals

89. On December 15, 2014, the FBI notified Dr. Socolov that it was releasing an additional 391 pages of the 882 pages it had reviewed, in response to “FOIPA Request No. 1192062-002” (“Release 3”).

90. In the cover letter for Release 3 (attached hereto as Exhibit 25), the FBI again invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, both Rule 6(e) of the Federal Rules of Criminal Procedure, which protects the secrecy of grand jury proceedings, and the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI also noted, without further elaboration, that: “[d]ocument(s) were located which originated with, or contained information concerning, another Government agency”; it further noted that it was “consulting with OGA” and “will correspond with you regarding this information when the consultation is finished.”

91. On January 5, 2015, the FBI notified Dr. Socolov that it was releasing an additional 733 pages, having reviewed 839 pages, in response to “FOIPA Request No. 1192062-002” (“Release 4”).

92. In the cover letter for Release 4 (attached hereto as Exhibit 26), the FBI again invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, Rule 6(e) of the Federal Rules of Criminal Procedure, which protects the secrecy of grand jury proceedings, and the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI also noted, without further elaboration, that: “[d]ocument(s) were located which originated with, or contained information concerning, other Government agencies” and further noted that it was “consulting with OGA(s)” and “will correspond with you regarding this information when the consultation is finished.”

93. On January 30, 2015, the FBI notified Dr. Socolov that it was releasing an additional 816 pages, having reviewed 821 pages, in response to “FOIPA Request No. 1192062-002” (“Release 5”).

94. In the cover letter for Release 5 (attached hereto as Exhibit 27), the FBI again invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI also noted, without further elaboration, that: “[d]ocument(s) were located which originated with, or contained information concerning, other [sic] Government agency”; it further noted that it was “consulting with [sic] OGA” and “will correspond with you regarding this information when the consultation is finished.”

95. On February 2, 2015, the NYCLU filed an administrative appeal of Releases 3 and 4 with the OIP on behalf of Dr. Socolov (the “Third/Fourth Appeal”).

96. On February 10, 2015, the NYCLU filed an administrative appeal of Release 5 with the OIP on behalf of Dr. Socolov (the “Fifth Appeal”).

97. On February 18, 2015, the OIP acknowledged receipt of the Third/Fourth Appeal and assigned the appeal number AP-2015-01751.

98. On February 24, 2015, the FBI acknowledged receipt of the Fifth Appeal and assigned the appeal number AP-2015-01853.

99. On September 11, 2015, the OIP responded to the Third/Fourth Appeal, remanding in part Dr. Socolov's request to the FBI "for further processing of certain responsive records" and stating that "[i]f the FBI determines that additional records are releasable, it will send them." The OIP otherwise affirmed the FBI's actions.

100. On September 30, 2015, the OIP affirmed the FBI's action regarding Release 5.

101. With respect to the OIP's decision concerning the Third/Fourth Appeal, on October 19, 2015, the FBI acknowledged receipt of the remand and informed Dr. Socolov that it would "inform [her] of the results in future correspondence."

102. Ultimately, the FBI re-processed the withholdings in Release 3 and produced two additional pages more than a year later, on January 27, 2016, as part of Release 17. No additional documents were released in connection with Release 4.

Release 6 and Appeal

103. On February 25, 2015, the FBI notified Dr. Socolov that it was releasing an additional 477 pages, having reviewed 566 pages, in response to "FOIPA Request No. 1192062-002" ("Release 6").

104. In the cover letter for Release 6 (attached hereto as Exhibit 28), the FBI again invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI also noted, without further elaboration, that: (i) “document(s) were located which originated with, or contained information concerning, other Government agencies”; (ii) “[t]his information has been referred to the OGA for review and direct response to you”; and (iii) the FBI was “consulting with OGA(s)” and “will correspond with you regarding this information when the consultation is finished.”

105. On March 10, 2015, the NYCLU filed an administrative appeal of Release 6 with the OIP on behalf of Dr. Socolov (the “Sixth Appeal”).

106. On March 19, 2015, the OIP acknowledged receipt of the Sixth Appeal and assigned the appeal number AP-2015-02230.

107. On September 14, 2015, the OIP affirmed the FBI’s actions with respect to Release 6.

Release 7 and Appeal

108. On March 27, 2015, the FBI notified Dr. Socolov that it was releasing an additional 607 pages, having reviewed 846 pages, in response to “FOIPA Request No. 1192062-002” (“Release 7”).

109. In the cover letter for Release 7 (attached hereto as Exhibit 29), the FBI again invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, both Rule 6(e) of the Federal Rules of Criminal Procedure, which protects the secrecy of grand jury proceedings, and the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods);
- **Exemption 6** (the Third Party Personal Privacy Exemption);
- **Exemption 7(C)** (the Law Enforcement Personal Privacy Exemption);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI also noted, without further elaboration, that: “[d]ocument(s) were located which originated with, or contained information concerning, other Government agencies”; it further noted that it was “consulting with OGA’s [sic]” and “will correspond with you regarding this information when the consultation is finished.”

110. On April 9, 2015, the NYCLU filed an administrative appeal of Release 7 with the OIP on behalf of Dr. Socolov (the “Seventh Appeal”).

111. On April 21, 2015, the OIP acknowledged receipt of the Seventh Appeal, and assigned the appeal number AP-2015-02760.

112. On September 11, 2015, the OIP affirmed the FBI’s actions concerning Release 7.

Release 8 and Appeal

113. On April 30, 2015, the FBI notified Dr. Socolov that it was releasing an additional 71 pages, having reviewed 908 pages, in response to “FOIPA Request No. 1192062-002” (“Release 8”).

114. In the cover letter for Release 8 (attached hereto as Exhibit 30), the FBI again invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, both Rule 6(e) of the Federal Rules of Criminal Procedure, which protects the secrecy of grand jury proceedings, and the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI also noted, without further elaboration, that: “[d]ocument(s) were located which originated with, or contained information concerning, another Government agency”; it further noted that it was “consulting with the OGA” and “will correspond with you regarding this information when the consultation is finished.”

115. On May 7, 2015, the NYCLU filed an administrative appeal of Release 8 with the OIP on behalf of Dr. Socolov (the “Eighth Appeal”).

116. On June 2, 2015, the OIP acknowledged receipt of the Eighth Appeal and assigned the appeal number AP-2015-03216.

117. On September 22, 2015, the OIP affirmed the FBI’s actions concerning Release 8.

Release 9 and Appeal

118. On June 10, 2015, the FBI released 178 pages, having reviewed 636 pages, in response to “FOIPA Request No. 1192062-002” (“Release 9”).

119. In the cover letter for Release 9 (attached hereto as Exhibit 31), the FBI again invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

120. In Release 9, the FBI redacted nearly identical versions of documents that it had previously produced in their entirety. For example, the FBI produced a document in Release 1 identifying information from “Bureau Source Two,” which makes reference to “ZORA in September Nineteen Fortyfour [sic] employed by OWI.”⁴⁵ “ZORA” refers to Flora Don Wovschin, one of Ms. Coplon’s Barnard classmates whom the FBI suspected of Soviet espionage, which information is publicly known from the VENONA decrypts.⁴⁶ In Release 9, however, the FBI redacted the aforementioned information in a nearly identical version of the same document, despite

⁴⁵ Ex. 32A (unredacted version of Mar. 30, 1949 Teletype produced in Release 1).

⁴⁶ See Ex. 13 at 2 (Jan. 15, 1945 VENONA Decrypt) (identifying “ZORA” as “Flora Don Wovschin”).

having previously released that already publicly available information.⁴⁷ To justify this redaction, the FBI cited Exemption 3, here, the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), presumably because “Bureau Source Two” is still a confidential intelligence source as it pertains to Ms. Wovschin some seventy years ago.

121. On June 23, 2015, the NYCLU filed an administrative appeal of Release 9 with the OIP on behalf of Dr. Socolov (the “Ninth Appeal”).

122. On July 14, 2015, the OIP acknowledged receipt of the Ninth Appeal and assigned the appeal number AP-2015-04077.

123. On September 2, 2015, the OIP affirmed the FBI’s actions concerning Release 9.

Release 10 and Appeal

124. On June 29, 2015, the FBI released 924 pages, having reviewed 1,254 pages, in response to “FOIPA Request No. 1192062-002” (“Release 10”).

125. In the cover letter for Release 10 (attached hereto as Exhibit 33), the FBI again invoked the following FOIA exemption:

- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption).

126. On July 14, 2015, the NYCLU filed an administrative appeal of Release 10 with the OIP on behalf of Dr. Socolov (the “Tenth Appeal”).

127. On July 22, 2015, the OIP acknowledged receipt of the Tenth Appeal and assigned the appeal number AP-2015-04609.

128. On September 8, 2015, the OIP affirmed the FBI’s actions concerning Release 10.

Release 11 and Appeal

129. On July 20, 2015, the FBI released 149 pages, having reviewed 756 pages, in response to “FOIPA Request No. 1192062-002” (“Release 11”).

⁴⁷ Compare Ex. 32A, with Ex. 32B (redacted version of Mar. 30, 1949 Teletype produced in Release 9).

130. In the cover letter for Release 11 (attached hereto as Exhibit 34), the FBI again invoked the following FOIA exemptions:

- **Exemption 6** (the Third Party Personal Privacy Exemption); and
- **Exemption 7(C)** (the Law Enforcement Personal Privacy Exemption).

131. On August 13, 2015, the NYCLU filed an administrative appeal of Release 11 with the OIP on behalf of Dr. Socolov (the “Eleventh Appeal”).

132. On August 19, 2015, the OIP acknowledged receipt of the Eleventh Appeal and assigned the appeal number AP-2015-05210.

133. On September 14, 2015, the OIP affirmed the FBI’s actions concerning Release 11.

Release 12 and Appeal

134. On August 31, 2015, the FBI released 956 pages, having reviewed 1,129 pages, in response to “FOIPA Request No. 1192062-002” (“Release 12”).

135. In the cover letter for Release 12 (attached hereto as Exhibit 35), the FBI again invoked the following FOIA exemption:

- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption).

136. On September 15, 2015, the NYCLU filed an administrative appeal of Release 12 with the OIP on behalf of Dr. Socolov (the “Twelfth Appeal”).

137. On September 21, 2015, the OIP acknowledged receipt of the Twelfth Appeal and assigned the appeal number AP-2015-05737.

138. On January 11, 2016, the OIP affirmed the FBI’s actions concerning Release 12.

Release 13 and Appeal

139. On September 30, 2015, the FBI released 447 pages, having reviewed 544 pages (“Release 13”).

140. In the cover letter for Release 13 (attached hereto as Exhibit 36), the FBI invoked the following FOIA exemptions:

- **Exemption 3** (the Statutory Exemption—here, both Rule 6(e) of the Federal Rules of Criminal Procedure, which protects the secrecy of grand jury proceedings, and the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI's letter also noted, without further elaboration, that: (i) "[d]ocument(s) were located which originated with, or contained information concerning, other Government Agencies"; (ii) "[t]his information has been referred to the OGA for review and direct response to you"; and (iii) it was "consulting with another agency" and "will correspond with you regarding this information when the consultation is completed."

141. On October 7, 2015, the NYCLU filed an administrative appeal of Release 13 with the OIP on behalf of Dr. Socolov (the "Thirteenth Appeal").

142. On October 15, 2015, the OIP acknowledged receipt of the Thirteenth Appeal and assigned the appeal number AP-2015-06062.

143. On March 14, 2016, the OIP responded to the Thirteenth Appeal, remanding, in part, Dr. Socolov's request to the FBI "for further processing of certain responsive records" and stating that "[i]f the FBI determines that additional records are releasable, it will send them." The OIP otherwise affirmed the FBI's actions.

144. On April 13, 2016, the FBI acknowledged receipt of the remand and informed Dr. Socolov that it would "inform [her] of the results in future correspondence."

145. On June 6, 2016, the FBI released an additional 55 pages, having reviewed 55 pages ("First Supplemental Release 13").

146. In the cover letter for First Supplemental Release 13 (attached hereto as Exhibit 37), the FBI again invoked the following FOIA exemptions:

- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI's letter also noted, without further elaboration, that: "[d]ocument(s) were located which originated with, or contained information concerning, other Government Agencies"; it further noted that it was "consulting with another agency" and "will correspond with you regarding this information when the consultation is completed."

147. On June 29, 2016, the NYCLU filed an appeal to the First Supplemental Release 13 on behalf of Dr. Socolov.

148. On September 14, 2016, the OIP responded to the appeal, informing the NYCLU that it was remanding Dr. Socolov's request to the FBI "for further processing of one page of responsive records."

149. On October 6, 2016, the FBI released one additional page to Dr. Socolov.

150. As discussed above, Release 13 includes heavy redactions pertaining to the data slips found in Ms. Coplon's purse at the time of her arrest, including redactions to data slips that have been matters of public record for nearly seventy years and whose contents the FBI revealed elsewhere in the interim releases.

Release 14 and Appeal

151. On October 21, 2015, the FBI released 1,019 pages, having reviewed 1,022 pages ("Release 14").

152. In the cover letter for Release 14 (attached hereto as Exhibit 38), the FBI again invoked the following FOIA exemption:

- **Exemption 3** (the Statutory Exemption—here, the National Security Act of 1947, 50 U.S.C. § 3024(i)(1), which protects intelligence sources and methods).

153. On October 27, 2015, the NYCLU filed an administrative appeal of Release 14 with the OIP on behalf of Dr. Socolov (the “Fourteenth Appeal”).

154. On November 3, 2015, the OIP acknowledged receipt of the Fourteenth Appeal and assigned the appeal number AP-2015-00277.

155. On December 9, 2015, the OIP affirmed the FBI’s actions concerning Release 14.

Release 15 and Appeal

156. On November 30, 2015, the FBI released 857 pages, having reviewed 998 pages (“Release 15”).

157. In the cover letter for Release 15 (attached hereto as Exhibit 39), the FBI again invoked the following FOIA exemptions:

- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

The FBI’s letter also noted, without further elaboration, that: “[d]ocument(s) were located which originated with, or contained information concerning, another Government Agency”; it further noted that it was “consulting with another agency” and “will correspond with you regarding this information when the consultation is completed.”

158. On December 10, 2015, the NYCLU filed an administrative appeal of Release 15 with the OIP on behalf of Dr. Socolov (the “Fifteenth Appeal”).

159. On December 14, 2015, the OIP acknowledged receipt of the Fifteenth Appeal and assigned the appeal number AP-2016-00920.

160. March 16, 2016, the OIP affirmed the FBI’s actions concerning Release 15.

Release No. 16

161. On December 23, 2015, the FBI released 298 pages, having reviewed 606 pages (“Release 16”).

162. In the cover letter for Release 16 (attached hereto as Exhibit 40), the FBI again invoked the following FOIA exemptions:

- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

163. On January 21, 2016, the NYCLU filed an administrative appeal of Release 16 with the OIP on behalf of Dr. Socolov (the “Sixteenth Appeal”).

164. On January 29, 2016, the OIP acknowledged receipt of the Sixteenth Appeal and assigned the appeal number AP-2016-01422.

165. On March 14, 2016, the OIP affirmed the FBI’s actions concerning Release 16.

Release No. 17

166. On January 27, 2016, the FBI released 145 pages, having reviewed 321 pages (“Release 17”).

167. In the cover letter for Release 17 (attached hereto as Exhibit 41), the FBI again invoked the following FOIA exemption:

- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption).

The FBI also noted that “[d]ocument(s) were located which originated with, or contained information concerning, another Government Agency” and further noted that it was “consulting with another agency” and “will correspond with you regarding this information when the consultation is completed.”

168. On February 3, 2016, the NYCLU filed an administrative appeal of Release 17 with the OIP on behalf of Dr. Socolov (the “Seventeenth Appeal”).

169. On February 4, 2016, the OIP acknowledged receipt of the Seventeenth Appeal and assigned the appeal number AP-2016-01567.

170. On May 12, 2016, the OIP affirmed the FBI's actions concerning Release No. 17.

The “Referral Directs” and the “Referral Consults”

171. As noted above, the FBI informed Dr. Socolov on ten occasions that, in the course of its review and release of documents responsive to Dr. Socolov's FOIA Request No. 1192062-002, it had located documents that “originated with, or contained information concerning other Government Agencies [“OGAs”]” and that this information was either being “referred to the OGA(s) for review and direct response to” Dr. Socolov (“Referral Directs”) or that the FBI was “consulting with another agency” and would “correspond with [Dr. Socolov] regarding this information when the consultation is completed” (“Referral Consults”). The Referral Consults were assigned the FOIPA Request No. 1192062-003.

172. In the case of both the Referral Consults and the Referral Directs, Dr. Socolov still has not received complete responses, either directly or through the FBI, from the relevant OGAs who have information responsive to her FOIA Requests. Accordingly, Dr. Socolov is presently not challenging either the adequacy of the search conducted by the FBI or OGAs with respect to the Referral Consults in Request No. 1192062-003 and the Referral Directs or the propriety of the redactions or withholdings of any documents released pursuant to the Referral Consults in Request No. 1192062-003 and the Referral Directs, and Dr. Socolov also is not waiving her right to make such challenges in the future and instead reserves all such rights.

CAUSES OF ACTION

Count I

173. Plaintiff repeats and re-alleges each paragraph above as if fully set forth herein.

174. On information and belief, the FBI has not (i) undertaken an adequate search of its records or (ii) produced all of the documents responsive to Dr. Socolov's Second Request (Request No. 1192062-002).⁴⁸

Count II

175. Plaintiff repeats and re-alleges each paragraph above as if fully set forth herein.

176. The FBI has improperly redacted and/or withheld, in whole or in part, documents that were properly sought by Dr. Socolov pursuant to the Second Request (Request No. 1192062-002);⁴⁹ and in particular, the FBI improperly invoked the following exemptions:

- **Exemption 3** (the Statutory Exemption, with respect to the National Security Act of 1947, 50 U.S.C. § 3024(i)(1));
- **Exemption 6** (the Third Party Personal Privacy Exemption);
- **Exemption 7(C)** (the Law Enforcement Personal Privacy Exemption);
- **Exemption 7(D)** (the Law Enforcement Confidential Source Exemption); and
- **Exemption 7(E)** (the Law Enforcement Techniques Exemption).

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare improper Defendants' failure to perform an adequate search for responsive records;
2. Order Defendants to perform an adequate search for responsive records;
3. Declare improper Defendants' withholding or redacting the requested records pursuant to FOIA Exemptions 3, 6 and 7(C), 7(D), and 7(E).

⁴⁸ As discussed above, Dr. Socolov reserves and is not waiving her rights to challenge the adequacy of any searches with respect to the Referral Consults in Request No. 1192062-003, the Referral Directs, or the Declassification Request in Request No. 1321594-000.

⁴⁹ As discussed above, Dr. Socolov reserves and is not waiving her rights to challenge the propriety of any redactions or withholdings of any documents released pursuant to the Referral Consults in Request No. 1192062-003, the Referral Directs, or the Declassification Request in Request No. 1321594-000.

4. Enjoin Defendants from withholding or redacting the requested records pursuant to FOIA Exemptions 3, 6 and 7(C), 7(D), and 7(E).
5. Order Defendants to promptly produce a *Vaughn* index;
6. Order Defendants to release to Plaintiff each of the records sought or any segregable portions of the same;
7. Enjoin Defendants from charging fees to Plaintiff in connection with the search, review, or duplication for processing of the Requests;
8. Award Plaintiff costs and reasonable attorneys' fees incurred in this action; and
9. Grant such other relief as the Court may deem just and proper.

Dated: April 15, 2019.

Respectfully submitted,

/s/ T. Ray Guy

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